

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM J. WHITSITT,

Plaintiff,

v.

JEAN ZEDLITZ, et al.

Defendants.

No. C 08-01803 JSW

**ORDER CONTINUING HEARING  
ON MOTION TO DISMISS,  
VACATING CASE  
MANAGEMENT CONFERENCE;  
INSTRUCTIONS TO CLERK;  
AND DIRECTING DEFENDANT  
TO RE-SERVE MOTION TO  
DISMISS**

On November 2, 2011, the Ninth Circuit issued an opinion in which it affirmed, in part, and reversed, in part, this Court's Order granting Defendants' motion to dismiss. In that Order, the Court also dismissed a due process claim that Plaintiff asserted against R. Lance & Son. On December 16, 2011, this Court issued an Order directing that service be effected upon R. Lance & Son. The Court served that Order on Plaintiff. However, the docket reflects that it was returned as undeliverable, apparently because Plaintiff has moved and the time for forwarding his mail has expired. (*See* Docket No. 69.)

Pursuant to Northern District Civil Local Rule 3-11(a), when a party's address changes during the course of litigation, it is that party's duty to "promptly file with the Court and serve upon all opposing parties a Notice of Change of Address specifying the new address." In addition, "[t]he Court may, without prejudice, dismiss a complaint or strike an answer when: (1) Mail directed to [that party] by the Court has been returned to the Court as not deliverable; and (2) The Court fails to receive within 60 days of this return a written communication from the [party] indicating a current address." N.D. Civ. L.R. 3-11(b).

1 Plaintiff has not submitted a change of address to this Court, and more than sixty days  
2 have passed since the Order Directing Service was returned. Although the Court could, within  
3 its discretion, dismiss this matter without prejudice, the Court was able to locate a different  
4 address for Plaintiff in materials that he filed during his appeal. Accordingly, the Clerk shall  
5 serve a copy of this Order on Plaintiff at the address currently listed on the docket as well as  
6 this new address. If Plaintiff does receive this Order, he is ORDERED to file a Notice of  
7 Change of Address with the Court and to serve that notice on all opposing parties. If this Order  
8 is returned as undeliverable to both addresses, and if the Court does not receive a Notice of  
9 Change of Address within sixty days of any returned mail, the Court shall dismiss this matter  
10 without prejudice.

11 On January 26, 2012, R. Lance & Sons. Co. filed a motion to dismiss, which is  
12 scheduled for a hearing on March 2, 2012. Under the Northern District Civil Local Rules,  
13 Plaintiff's opposition to that motion would have been due on February 13, 2012. *See* N.D. Civ.  
14 L.R. 7-3(a), 5-5(a). Plaintiff has not filed an opposition to the motion. However, R. Lance &  
15 Sons served Plaintiff at his old address. Thus, it is not clear that Plaintiff has received a copy of  
16 the motion to dismiss. Accordingly, the Court HEREBY ORDERS Defendant to re-serve  
17 Plaintiff with the motion to dismiss, at both his old and presumably new address as set forth on  
18 the Certificate of Service to this Order, by no later than February 28, 2012, and to file proof of  
19 such service with the Court.

20 The Court HEREBY CONTINUES the hearing on the Motion to Dismiss from March 2,  
21 2012 to April 20, 2012 at 9:00 a.m., and it VACATES the case management conference  
22 scheduled for March 23, 2012 at 1:30 p.m. Pursuant to this Order, Plaintiff shall file his  
23 opposition to the motion to dismiss by no later than March 16, 2012, and Defendant's reply  
24 shall be due by no later than March 30, 2012. If the Court finds the matter suitable for  
25 disposition without oral argument, it shall notify the parties in advance of the hearing date.

26 Finally, the Court HEREBY ADVISES Plaintiff that the Handbook for Pro Se Litigants,  
27 which contains helpful information about proceeding without an attorney, is available through  
28 the Court's website or in the Clerk's office. The Court also advises Plaintiff that he also may

1 wish to seek assistance from the Legal Help Center. Plaintiff may call the Legal Help Center at  
2 415-782-9000, extension 8657, or sign up on the 15th Floor of the Courthouse, Room 2796, for  
3 a free appointment with an attorney who may be able to provide basic legal help, but not legal  
4 representation.

5 **IT IS SO ORDERED.**

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7 Dated: February 21, 2012

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9 JEFFREY S. WHITE  
10 UNITED STATES DISTRICT JUDGE  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM J. WHITSITT et al,  
Plaintiff,

Case Number: CV08-01803 JSW

**CERTIFICATE OF SERVICE**

v.


JEAN ZEDLITZ et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 21, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

William J. Whitsitt  
1763 Ray Wise Lane  
Tracy, CA 95376

Dated: February 21, 2012

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk